

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KIM LEE,

Defendant-Appellant.

UNPUBLISHED

December 26, 2000

No. 216365

Wayne Circuit Court

Criminal Division

LC No. 98-005699

Before: Bandstra, C.J., and Fitzgerald and D. B. Leiber*, JJ.

PER CURIAM.

Defendant appeals as of right from the judgment of sentence requiring her to pay restitution. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with two counts of assault with intent to commit murder, MCL 750.83; MSA 28.278, and one count of larceny in a building, MCL 750.360; MSA 28.592, in connection with an incident in the home she shared with Latanya Walton, Walton's daughter Lachina, and Walton's brother. The evidence showed that defendant stabbed Walton with a butcher knife and hit her with a hot skillet. Defendant hit Lachina with her hand and the skillet, and threatened her with the knife. Walton, Lachina, and Walton's brother escaped from the house. Subsequently, it was discovered that numerous items, including Walton's keys, were missing from the house. The disappearance of at least some of the items was discovered the day after the incident.

The trial court found defendant guilty of one count of assault with intent to commit murder, and one count of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. The court acquitted defendant of the charge of larceny in a building, noting that while strong inferences could be made that defendant took the items from Walton's house, insufficient evidence existed to prove her guilt beyond a reasonable doubt. The court sentenced defendant to concurrent terms of twelve to eighteen years and two to ten years in prison for the convictions of assault with intent to commit murder and assault with intent to do

* Circuit judge, sitting on the Court of Appeals by assignment.

great bodily harm less than murder, respectively. In addition, the court ordered defendant to pay restitution in the amount of \$1,485, as requested by Walton.

Defendant moved to amend the sentence, arguing that the trial court lacked authority to order restitution for an offense of which she was acquitted and which was not similar in nature to the offenses of which she was convicted. The trial court denied the motion, concluding that restitution could be based on uncharged conduct or dismissed charges.

Restitution is designed to allow victims of crime to recoup losses suffered as a result of criminal conduct. *People v Grant*, 455 Mich 221, 230; 565 NW2d 389 (1997). Restitution may be ordered for damages that arose out of a defendant's course of conduct. MCL 780.766(2); MSA 28.1287(766)(2); *People v Gahan*, 456 Mich 264, 272; 571 NW2d 503 (1997).

Defendant argues that the trial court misinterpreted the statute allowing restitution for damages arising out of a course of conduct. We disagree and affirm the award of restitution. Restitution may be ordered for acts in a defendant's course of conduct that did not result in a conviction. *Gahan, supra*; *People v Persails*, 192 Mich App 380, 383; 481 NW2d 747 (1991). Defendant's assertion that such acts must be the same as or very similar in nature to the act which resulted in a conviction is an overly narrow interpretation of the authority allowing restitution under such circumstances. See, e.g., *People v Letts*, 207 Mich App 479, 481; 525 NW2d 171 (1994). The larceny with which defendant was charged but of which she was acquitted was alleged to have occurred at the same time as the assaults of which she was convicted. Persuasive evidence, albeit circumstantial in nature, supports a causal connection between the disappearance of items from Walton's home and defendant's conduct. *People v Pettit*, 88 Mich App 203, 207; 276 NW2d 878 (1979). The trial court was within its authority in ordering defendant to pay restitution.

Even assuming arguendo that defendant waived the issue of the trial court's authority to order restitution by failing to object at the time of sentencing, defendant was not deprived of the effective assistance of counsel at sentencing. An objection by counsel would not have resulted in a different outcome. No prejudice occurred. *People v Pickens*, 446 Mich 298, 313; 521 NW2d 797 (1994).

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Dennis B. Leiber